

DIVISION III  
ARKANSAS COURT OF APPEALS  
NOT DESIGNATED FOR PUBLICATION  
DAVID M. GLOVER, JUDGE

CACR05-1089

April 26, 2006

APPEAL FROM THE UNION  
COUNTY CIRCUIT COURT  
[CR-04-525]

STEPHEN E. WILSON  
APPELLANT  
V.

HONORABLE HAMILTON HOBBS  
SINGLETON, CIRCUIT JUDGE

STATE OF ARKANSAS  
APPELLEE

AFFIRMED

Appellant, Stephen Wilson, was convicted by a Union County jury of murder in the first degree and sentenced to forty years in the Arkansas Department of Correction. Appellant raises five issues on appeal, arguing that the trial court erred (1) in not requiring the State to disclose the criminal histories of three of its witnesses; (2) by denying his motion to disclose the prosecutor's past or present relationship, associations, and ties with prospective jurors and witnesses; (3) by allowing El Dorado Police Captain David Smith to sit at counsel table for the State during jury selection; (4) by allowing the State to introduce evidence of his prior felony conviction; and (5) by denying him any opportunity to present evidence or argue that the shooting was the result of self-defense related to the delivery of controlled substances. We affirm.

Appellant does not argue that there is insufficient evidence to support the verdict; therefore, only a brief recitation of the facts is necessary. On August 12, 2004, appellant shot Patrick Bland at a car wash in El Dorado. Bland was taken to the hospital, where he

later died of the injuries suffered in the shooting. Appellant was arrested, tried, and convicted of first-degree murder in Bland's death.

In his first argument, appellant argues that the trial court erred in not requiring the State to disclose the criminal histories of three of its witnesses – Morando Wilson, Twanna Smith, and Sheria Miller. Rule 17.1(a)(vi) of the Arkansas Rules of Criminal Procedure provides:

Subject to the provisions of Rules 17.5 and 19.4, the prosecuting attorney shall disclose to defense counsel, upon timely request, the following material and information which is or may come within the possession, control, or knowledge of the prosecuting attorney: . . . (vi) any record of prior criminal convictions of persons whom the prosecuting attorney intends to call as witnesses at any hearing or at trial, if the prosecuting attorney has such information.

In *Hicks v. State*, 340 Ark. 605, 612, 12 S.W.3d 219, 223 (2000) (citations omitted), our supreme court held:

The standard of review for imposing sanctions for discovery violations is whether there has been an abuse of discretion. A prosecutorial discovery violation does not automatically result in reversal. The key in determining if a reversible discovery violation exists is whether the appellant was prejudiced by the prosecutor's failure to disclose. Absent a showing of prejudice, we will not reverse.

Appellant's attorney was apprised prior to trial that Morando Wilson had a prior felony conviction, but appellant has failed to show that Wilson had other convictions the State failed to disclose or that the other two witnesses had any prior convictions. Appellant has failed to show that the State committed any discovery violation; therefore he cannot show any prejudice, and we affirm on this point.

In his second argument, appellant contends that the trial court erred "by denying appellant's motion to disclose the prosecutor's past or present relationship, associations and ties with prospective jurors and witnesses." In support of this argument, appellant cites

Rule 17.1(b)(iii) of the Arkansas Rules of Criminal Procedure. We first note that this rule applies only to witnesses, not jurors as appellant's argument asserts. Appellant admits that he was already aware of one relationship between an employee of the prosecutor's office and the victim. However, appellant has failed to show that the State did not disclose all of the prosecutor's past and present relationships, associations, or ties with prospective witnesses. No reversible error occurred with respect to this issue.

In his third argument, appellant contends that the trial court erred by allowing Captain David Smith of the El Dorado Police Department to sit at counsel table with the State during jury selection. As appellant correctly points out, as a general rule the trial court may control the seating in the courtroom, and unless a party suffers some prejudice from the arrangement, seating is not a ground for reversal. *Webster v. State*, 284 Ark. 206, 680 S.W.2d 906 (1984). In support of his argument, appellant cites *Moore v. State*, 299 Ark. 532, 773 S.W.2d 834 (1989) (error to allow police officers to sit inside railing) and *Mask v. State*, 314 Ark. 25, 869 S.W.2d 1 (1993) (error to allow victim to sit at counsel table). We find those cases to be distinguishable from the present case because in those cases, the trial court allowed persons who had testified against the appellants to sit inside the railing or at counsel table after they had testified. In reversing, our supreme court held in both instances that such seating arrangements were tantamount to the trial court expressing an opinion on the credibility of the witnesses. In the present case, appellant does not assert, and the abstract does not indicate, that Captain Smith testified at trial or was seated at counsel table at any time other than for jury selection. Furthermore, the record also does not indicate whether Captain Smith was in uniform while he was seated at counsel table. Appellant has failed to demonstrate how Captain Smith's presence

with the State at counsel table during jury selection prejudiced him; therefore, we affirm on this point.

In his fourth argument, appellant contends that the trial court erred in allowing the State to introduce evidence of his prior felony conviction. At trial, the State elicited during its cross-examination of appellant that appellant had previously been convicted of delivery of a controlled substance (marijuana), possession of a controlled substance (marijuana), and possession of drug paraphernalia. Appellant first argues that he was entitled to know before trial whether the State would attempt to introduce the prior convictions, and that the nondisclosure of the prior felonies was prejudicial. This argument was not made to the trial court, and we do not address arguments made for the first time on appeal. See *Woolbright v. State*, 357 Ark. 63, 160 S.W.3d 315 (2004). For this reason, this portion of appellant's argument is not preserved for appellate review.

Appellant also argues that his prior felony convictions were not for dishonesty, and that the trial court did not determine whether the probative value of the convictions was substantially outweighed by unfair prejudice as required by Arkansas Rule of Evidence 609(a), which allows the credibility of a witness to be impeached by felony convictions or crimes involving dishonesty under certain circumstances. These arguments were made to the trial court, and they are therefore preserved for appellate review. However, we hold that the trial court did not abuse its discretion when it allowed the State to impeach appellant's credibility on the stand with his prior felony convictions. Rule 609(a) of the Arkansas Rules of Evidence provides:

For the purpose of attacking the credibility of a witness, evidence that he has been convicted of a crime shall be admitted but only if the crime (1) was punishable by death or imprisonment in excess of one [1] year under the law under which he was convicted, and the court determines that the probative

value of admitting this evidence outweighs its prejudicial effect to a party or a witness, or (2) involved dishonesty or false statement, regardless of the punishment.

Appellant is correct that none of his prior felony convictions involved crimes of dishonesty; however, they were punishable by more than one year in prison, which subjects him to the impeachment provisions of Rule 609. The admissibility of prior convictions must be decided on a case-by-case basis, but it is well-established that the State has a right to impeach the credibility of a witness with prior convictions under Rule 609 of the Arkansas Rules of Evidence. *Benson v. State*, 357 Ark. 43, 160 S.W.3d 341 (2004). The trial court has considerable discretion in determining whether the probative value of prior convictions outweighs their prejudicial effect, and that decision will not be reversed absent an abuse of discretion. *Id.* If a defendant elects to take the witness stand, the appellate courts have consistently permitted prior convictions to be used for impeachment, even when those convictions are similar to the charges being tried. *Id.* In the present case, appellant's prior felony convictions were not similar to the crime for which he was being tried. We find that the trial court did not abuse its discretion in allowing appellant's prior felony convictions to be used to impeach his credibility.

In his fifth argument, appellant maintains that the trial court erred by denying him any opportunity to present evidence or to argue that the shooting was the result of self-defense related to the delivery of controlled substances. We disagree. Appellant attempted to mount this defense through the testimony of his girlfriend and his own testimony by using hearsay statements from a third party, Mozell Moore, who was not called as a witness, regarding a conflict between appellant and Moore. Appellant argues on appeal that the statements of Moore that he wished to present to the jury were not hearsay;

however, rulings on the admissibility or inadmissibility of evidence are within the trial court's discretion, and those rulings will not be disturbed on appeal absent a showing of an abuse of that discretion. *Grant v. State*, 357 Ark. 91, 161 S.W.3d 785 (2004). Furthermore, as the State points out, any problem between Moore and appellant was irrelevant to the issue of whether the victim in this case, Patrick Bland, was about to use deadly force on appellant. We find no abuse of discretion in the trial court's evidentiary rulings on this matter.

Under this point, appellant also argues that the trial court would not allow him to testify about an \$800 debt he owed Bland for marijuana; however, the abstract shows that when the State objected to that line of questioning as hearsay and irrelevant, appellant's counsel made no argument but rather stated that he would "move on." Therefore, this argument was not preserved for appellate review.

Affirmed.

HART and ROBBINS, JJ., agree.